

REMARKS

Reconsideration of the present application as amended is requested. Following Applicants' prior response, new grounds or rejection of the pending claims in view of newly cited prior art were levied. In particular, the publication of Biedermann (U.S. 2005/0154390) was cited as anticipating claim 36 and as rendering claims 37, 38, 41-47 obvious when combined with additional references. The publication of Ferree (U.S. 2003/0220643) was said to anticipate claim 48 and render its dependent claims 49-51 obvious when combined with a patent to Bao.

With respect to the rejections based on the Biedermann publication, Applicants have provided the accompanying Declaration under 37 C.F.R. 1.131 of Lawrence Boyd, one of the named inventors. This declaration establishes that the present claimed invention as defined in at least claims 36 and 41 was conceived prior to the earliest listed filing date for the Biedermann publication of November 7, 2003. The declaration also establishes that Mr. Boyd, the other named inventors and outside counsel worked diligently during the period from November 7, 2003, to December 31, 2003, to constructively reduce the invention to practice in the form of the present application filed less than two months after the Biedermann application was filed.

Thus, the Declaration under 37 C.F.R. 1.131 establishes a date of conception of the invention defined in the present claims that is prior to the earliest potential filing date for the Biedermann publication filing date. This earlier conception coupled with Mr. Boyd's diligence establishes a date of invention of the claimed subject matter prior to Biedermann, thereby removing the Biedermann publication as a reference.

With respect to claims 48-51, Applicant has amended claim 48 to further define the step of coupling a dynamic stabilization system across the motion segment as permitting not only natural motion of the disc but also rotation of the motion segment in the anterior/posterior (A/P) plane substantially fully in both directions. This language is supported in the specification by the discussion of flexion and extension at p. 15, lines 8-11, the description of range of angular motion at p. 18, lines 6-20, along with the range of motion depicted in FIGS. 1-3.

The Ferree publication is entitled "Devices to Prevent Spinal Extension" and the disclosure focuses on permitting flexion but restricting extension. See, e.g., Para. [0025],

[0027] – [0029]. Thus, Ferree does not contemplate a method in which the natural motion of the disc is preserved as well as the full rotation of the motion segment in the A/P plane – i.e., full extension and full flexion. In fact, Ferree specifically teaches away from a method that permits full extension. Thus, Ferree cannot anticipate Applicants' claims 48-51 as amended and it is believed that these claims are allowable over the art of record.

It is requested that the rejections of pending claims 36-38 and 41-51 be withdrawn and that action be taken toward a Notice of Allowance.

Respectfully Submitted,

Michael D. Beck

Maginot, Moore & Beck, LLP
Chase Tower
111 Monument Circle, Suite 3250
Indianapolis, Indiana 46204-5109
(317) 638-2922

Michael D. Beck
Attorney for Applicants
Registration No. 32,722